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*Hon James L Hale*

*With the Respect of*  
S P E E C H

OF

*GEO H YEAMAN*

HON. GEO. H. YEAMAN,

Of Kentucky,

ON THE

President's Proclamation,

DELIVERED IN THE

HOUSE OF REPRESENTATIVES,

December 18th, 1862.

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PUBLISHERS, BOOKSELLERS, PRINTERS AND STATIONERS,

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# S P E E C H .

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MR. CHAIRMAN: I have not sought to obtain the floor out of any factious opposition to the Administration. Neither will I offend its friends by that fierce advocacy of a system of pro-slavery propagandism which has done nearly as much harm on this floor and in the country as the policy, or rather the hobby, of abolition. My highest ambition is to appear here to-day as the champion of my country, and of my country's Constitution, which is at once the charter and the bulwark of my country's liberties.

Neither do I intend to consume the time of the House in making a speech against the rebellion. I have been speaking against it for two years in a country where it has had many able defenders on the stump, and now has many brave defenders in the field. The rebellion does not need to be argued with so much as it needs to be struck—to be struck such blows by our armies as have not yet been dealt to it. The principal promises I made to those who sent me here were, that I would accept no solution of our difficulties other than the unity of the Republic and the supremacy of the Constitution and laws of the United States; that I was in favor of putting forth the whole constitutional power of the Government to effect this; that I would vote all the men and all the money needed for that purpose; and that I would support this Administration, and the President at the head of it, against whom we all voted, if he would support the Constitution, and wage an earnest and decent war, inside the pale of the Constitution and the laws of nations and of humanity, to vindicate the majesty of the laws. I sit here day by day prepared to redeem these pledges.

But there are some things in the land that need to be spoken against; my constituents expect it of me; and by being spoken against now by those who are known to be the friends of the Government, it may save to our children, possibly to ourselves the trouble of fighting against them hereafter. Well might we dispense with our whole budget of political resolves, and for them substitute the nervous words of the alarm bell of another assembly in other times, "the republic is in danger." Those to whom we have committed the keeping of our destinies will excuse me if I say they have laid themselves obnoxious to the charge hurled by Cicero against Pompey, when he complained that the decree of the Roman Senate—"let the consuls see that no detriment comes to the republic"—had not been obeyed.

On a former day of this session I had the honor to submit to this House the following resolutions:

*"Resolved by the House of Representatives, (the Senate concurring,) that the Proclamation of the President of the United States, of the 22d of September, 1862, is not warranted by the Constitution.*

*"Resolved, That the policy of emancipation, as indicated in that proclamation, is not calculated to hasten the restoration of peace; is not well chosen as a war measure; and is an assumption of power dangerous to the rights of the citizen and to the perpetuity of free government."*

These resolutions were promptly laid on the table, and I now desire to give some of my reasons for offering them.

### REPUBLICAN PLATFORM.

When the Republican party met in convention at Chicago, in 1860, to nominate a candidate for the Presidency, and to adopt and put forth a platform of principles to recommend to the people, they made one which, with many faults, contained some good things. One clause of the second section affirmed:

"That the FEDERAL CONSTITUTION, the *rights of the States*, and the UNION of the States, must and shall be preserved."

That was a good plank to put in the platform of any party. The fourth article is all so good that I will quote it entirely:

"*Fourth:* That the maintenance inviolate of the rights of the States, and especially the right of each State to order and control its own domestic institutions, according to its own judgment exclusively, is essential to that balance of power on which the perfection and endurance of our political faith depends, and we denounce the lawless invasion by armed force of any State or Territory, no matter under what pretext, as among the gravest of crimes."

The party putting forth these principles was successful. The President came to the administration of the Government under the most inauspicious circumstances that ever attended the inauguration of any other Chief Executive of the Republic. Secession had begun its work. A political poison that had lurked in the system for sixty-three years—I mean since 1793—and which had produced strong eruptive symptoms in 1830–32, had at last become a frightful running sore, and was rapidly dissolving the political and territorial integrity of the nation.

### THE FIRST POSITION OF THE ADMINISTRATION.

The difficulties and complications of the situation, both political and military, were such that no course the President could have pursued would have been free from plausible criticism, and from the confident charge of having sacrificed the Republic when a different course would have saved it.

Much of his conduct has been approved by the loyal men in the slaveholding States, and while they have disapproved much of it, they have sometimes done so with the concession that there was much to palliate and excuse. Upon the main subject we now discuss, the subject matter of the President's late proclamation, the country was filled with hope by the language of the President's inaugural address:

"I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so."

The President proceeds to say:

"There is much controversy about the delivering up of fugitives from service or labor. The clause I now read is as plainly written in the Constitution as any other of its provisions: 'No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.' It is scarcely questionable that this provision was intended by those who made it for the reclaiming of what we call fugitive slaves; and the intention of the lawgiver is the law. All members of Congress swear their support to the whole Constitution, to this provision as much as any other. To the proposition, then, that slaves, whose cases come within the terms of this clause, shall be delivered up, their oaths are unanimous."

In his first message the President says :

"Lest there be some uneasiness in the minds of candid men as to what is to be the course of the Government towards Southern States after the rebellion shall have been suppressed, the Executive deems it proper to say it will be his purpose then, as ever, to be guided by the Constitution and the laws, and that he will probably have no different understanding of the powers and duties of the Federal Government relatively to the rights of the States and the people under the Constitution than that expressed in the inaugural address."

Soon afterwards the avowed policy of the Administration and the true law of the case were stated by Mr. Seward, Secretary of State, in his official correspondence with Mr. Dayton, then representing us abroad :

"The condition of slavery in the several States will remain just the same, whether it (the revolution) succeed or fail. There is not even a pretext for the complaint that the disaffected States are to be conquered by the United States if the revolution fail; for the rights of the States and the condition of every human being in them will remain subject to exactly the same laws and forms of administration, whether the revolution shall succeed or fail. In the one case the States would be federally connected with the new confederacy; in the other they would, as now, be members of the United States; but their constitution and laws, customs, habits, and institutions, in either case will remain the same.

"It is hardly necessary to add to this incontestable statement, the further fact that the new President, as well as the citizens through whose suffrages he has come into the administration, has always repudiated all designs whatever and whenever imputed to him and them of disturbing the system of slavery as it is existing under the Constitution and laws.

"The case, however, would not be fully presented if I were to omit to say that any such efforts on his part would be unconstitutional; and all his actions in that direction would be prevented by the judicial authority, even though they were assented to by Congress and the people."

In February, 1861, the Senate unanimously passed a resolution introduced by the Senator from Ohio, (Mr. SHERMAN):

"Resolved, That neither the Congress of the United States, nor the people or governments of the non-slaveholding States have the constitutional right to legislate upon or interfere with slavery in any of the slaveholding States in the Union."

In July, 1861, the resolution of my venerable colleague, (Mr. CRITTENDEN,) passed both Houses of Congress, with, I believe, but two dissenting votes in each House :

"That the present deplorable civil war has been forced upon the country by the disunionists of the southern States now in revolt against the constitutional Government, and in arms around the capital; that in this national emergency Congress, banishing all feeling of mere passion or resentment, will recollect its duty to the whole country; that this war is not waged upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions in those States, but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity equality, and rights of the several States unimpaired; that as soon as these objects are accomplished the war ought to cease."

When General Fremont undertook to emancipate slaves in Missouri by proclamation, the objectionable part of it was repudiated by the Administration. The President, if he has not been misunderstood, said, in his conversations with members of this House, especially as reported by the gentleman from Maryland, (Mr. CRISFIELD) and my colleague before me, (Mr. MENZIES,) that he had neither power nor intention to do the thing now complained of. I quote the substance not the language. I feel at liberty to do so, since those gentlemen did not deem it confidential.

These things gave hope to the country. I do not mean by this that he gave hope to those whom the other side of this House denounce as pro slavery propagandists. I am not one of them. But they gave hope to the friends of constitutional liberty that the Constitution would be abided by. A policy was announced, solemn promises were made; and their virtue was not merely in being a policy, but that it was a good policy—not merely in being good promises, but promises

that were gloriously worthy of being kept. I am not making these quotations with the view to fasten inconsistency upon the Administration. Inconsistency is often a small thing to be proved, when *that is all of it*. To cripple a political adversary is a common ambition. I am void of it to-day. I desire to cripple nobody, but only to heal the wounds of my country. Sir, I do not even do it to complain of broken promises, but for the higher purpose of calling the attention of the country—and especially of the gentlemen on the other side of this chamber—to the great responsibility and the great danger that may be and have been incurred by making such promises to the ear and breaking them to the hope. And I do it for another purpose. As the lawyer or the judge searches the reports for authorities, I have the legitimate right—one of the rights of discussion—to call to my assistance the great names, the great influence, and the acknowledged ability of the authors of these doctrines, to enable me to attack with success the errors of the proclamation.

I repeat, that from these things the country took cheer; but General Hunter, from whom better things had been expected, issued his proclamation emancipating (on paper) the slaves of the three States of South Carolina, Georgia, and Florida. The President repudiated the proclamation, but did it with the very ominous reservation to himself of the right to determine the legality of such measures, or the military necessity that might require their adoption. We also remember that, in the proposition for compensated emancipation, soon after so decorously and, I believe, so honestly made, and especially insisted upon with the border State members, he indicated there was “a pressure” upon him from a designated quarter—the party who approved General Hunter’s paper fulmination of freedom; that the country could not afford to lose the support of those from whom this pressure came; and a friendly admonition—for I have too much respect for the qualities of my people and the President’s appreciation of them to call it a threat—that if this scheme were not adopted, worse might come. The thing bears honesty upon the face of it, yet it is at once a melancholy and a ludicrous chapter in our political history. The Chief Executive of the greatest Republic in the world complaining of a pressure upon him to do a thing he did not want to do—a thing he had promised not to do, and warning his friends that he was about to give way under this pressure; thus advertising those who were applying it to redouble the force of the application! If he had plainly and stoutly said to the pressure party, “Away with your nonsense and with your malice, I will none of it, I will abide by the Constitution,” the agony would have been quickly over; and if he had lost their support, which is not at all probable, he would have been more than compensated by the support of those glorious majorities that have recently gone against his plans.

### THE PROCLAMATIONS.

But an all-seeing Providence has permitted, and a wilfully blind fanaticism has decreed, a different policy. The President’s two proclamations—one putting the whole country under martial law as to certain offences, and leaving it to military inquisitions to determine those offences, and the guilt of the offenders, with only the vague and worse than no definition of “disloyal practices” to go by; the other declaring,

"That on the 1st day of January, in the year of our Lord, 1863, all persons held as slaves in any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then thenceforward, and forever free; and the executive government of the United States, including the military and naval authority thereof, will *recognize and maintain* the freedom of such persons, and *will do no act or acts to suppress* such persons, or any of them, in *any efforts* they may make for their actual freedom;"

And offering to recommend to Congress that loyal masters who may suffer by this measure shall be compensated by the General Government; but whether we adopt that recommendation or not, the edict is still to be enforced. The language used is ominous. I hope its selection, and remarkable adaption to facts, were accidental and not intentional. Executive *power* is an expression of the Constitution—"Executive *Government* of the United States" is new. The Army and Navy have not been considered *authorities* in our system, but agencies subject to civil authority. The declaration that there shall be *no* acts done to suppress *any efforts* the slaves may make for actual freedom is chilling.

If this thing is legal, the right of the slave to freedom will become vested instantanor on the issual of the next proclamation on the 1st of January. The right to freedom being once legally acquired, can the President, or Congress, or any earthly power, legally deprive him of that right? The Kentucky Court of Appeals would hold not. Then suppose that on the 1st of February it is made known that by abandoning this scheme the Union can be restored, what condition are we in? Of course I would find no difficulty. But what would those who maintain the lawfulness of the measure do? Prefer the Union to the negro, or the negro to the Union? I want an answer, and I want it because it would throw some light on the question—where are we drifting?

Considering the large number of that race whose political status is to be thus changed, about as numerous as all the inhabitants of the colonies at the revolutionary war, the estimated value of these persons as property, the enormous value of the products of their labor, the intimate connection of that labor with the agriculture of one-third, and with the commerce two-thirds of our people, its connections with business and with credit in both sections of the country, and the sudden and convulsive change which is to come over all these, we may safely affirm there is not a precedent like it in the annals of the world. History recites many great and beneficent changes in the relations between dominant and servient or subject classes in Greece, in Russia, and in our own mother England; but none of them have ever been so sudden and violent as it is proposed this one shall be. It is doubtful whether it is in the power of man to produce such a one as is now demanded. Certainly none such can ever be beneficial. I have not forgotten the exodus of Israel out of Egypt which was ordered and piloted by divine power and skill. That was scarcely more than a tithe in magnitude, in comparison with the change now proposed for our country.

Where did the President derive the power to do this great thing? The Constitution of the United States creates the office of President, and vests in that officer the executive power of the Government. The same instrument that creates the office, confers upon the officer all the powers he has. It is as safe as it is true to say he has none outside of the instrument. He has such as are given, and among those given are none to issue these proclamations. I care not for any connection you may trace between the proclamations and acts of Congress. Congress had no more power to authorize the President to do these things, than he had to do them without any such supposed authority. Indeed, the legislative

authority is not claimed in defence of both, but only of the one establishing martial law, and for this the war power is a much more plausible pretext than anything to be found among the powers of the legislative department. I have asked the question, and I want it answered—where did the President get this power? The President very lately denied the power, and has not ventured to defend it in his message to this House. The Secretary of State, with the knowledge and approval of the President, denied it in his instructions to our foreign ministers with the view of advising the leading Powers of our deliberately adopted policy on this great question. The Senate denied it in the Sherman resolution; both Houses of Congress denied it in the Crittenden resolution; and greater far than this, than these, than all, the PEOPLE have denied it.

With all this great weight of authority, I yet scarcely know how to construct a regular legal argument against the validity of these measures. There are some things difficult to be explained, because they need no explanation, they are so plain when looked at.

If I am asked to prove the sun is bright, or the sky is blue, I have only to reply, look! If I am asked to prove the illegality of these measures, I can properly answer by asking for a clause, a sentence or a word in the Constitution that authorizes them. I ask, “is it so nominated in the bond?” Will the other side of this House venture to reply, “it is not so expressed; but what of that?” I hope they will. We will then have an issue joined upon which we can put ourselves upon the country and demand a verdict.

#### A WAR MEASURE.

It is very significant upon this question that the friends of these measures have not yet claimed that there is any direct authority for them, but only that they are military necessities; that is, useful and necessary war measures. This is abandoning the Constitution, and substituting in its stead a Government whose only source of power is the necessity of a given emergency, and one man is judge of the emergency and of the measures necessary to meet it. Theoretically it is a despotism. If it does not become one in practice, we have only to thank those who adopt the theory that their work is not as broad as their rule.

Gentlemen ought to be careful how they make precedents out of necessities and war measures. They might become a two-edged sword. They would cut North as well as South. It is falsely assumed that slavery is the cause of the rebellion. This is constantly assumed, but never yet proven. The cause of the rebellion was jealousy—thirsty ambition. When secession was a foregone conclusion, the conspirators had not the audacity to vote, in the other end of the Capitol, that they then needed further protection to slavery in the Territories; and the duty to protect, when necessary, was the distinguishing feature of their platform. Mr. Yancey, the master spirit among them, said, in his correspondence with Lord Russell, contrary to the words and the substance of the alarm he cried at the South: “It was from no fear that the slaves would be liberated that secession took place.”

No, Mr. Chairman, slavery was not the cause of the rebellion, but only a hobby in the hands of skillful conspirators, who understood their business, and did it well. The conduct of northern agitators, and of this Congress since the rebellion

began, has given plausibility to the falsehood. Slavery was not the cause of the rebellion. This logic would make all slaveholders rebels, whereas many who have suffered most for the Government, and fought as well for it on the field and harder for it at the polls than any others are slaveholders. Is the owner of a slave, of necessity, the enemy of the Government? How was it, then, that those who participated most in framing the Government, and most in administering it for fifty years out of seventy-five, were owners of slaves? The argument is an absurdity. It is not the moving cause, but only the hobby of the movers to fire the southern heart, and to precipitate a revolution. Was there never a rebellion or revolution in a country where there was no African slavery? And shall we adopt the plan of destroying any particular interest which happens to be selected as the theme of declamation and the means of intrigue by bad men? We have both false premises and false deductions from those premises.

But it is decreed that slavery shall be destroyed, and its destruction is called a WAR MEASURE. Very well. Here is a precedent. Now, suppose New England had demanded a high protective tariff on cotton and leather goods. It is refused; and she either secedes or attempts to collect the duties at her own ports, and raises an army to maintain the position thus assumed. The Government sends an army to enforce the laws. The fortunes of war vary. The brave sons of the granite hills and the pine forests were not so easy to conquer as had been supposed. And then the President says that as cotton and leather manufactures were the cause of the rebellion, their destruction has become a military necessity in the suppression of the rebellion, and the imperial edict goes forth that on the 1st day of January, 1863, all cotton mills and boot and shoe factories in States and parts of States in rebellion shall be burned down. The citizens of Ohio, Indiana, and Illinois might ask for an exemption from railroad tax. It is refused; mobs resist the assessors and collectors; a few regiments of militia are called out, and the insurgents beat them off. This is civil war. The principle applies to a small war as well as to a large one, and to one property as well as another. The States are declared in rebellion, and the railroads the cause of the rebellion. Their destruction is decreed as a military necessity, and on an appointed day of vengeance the beds are torn up, the ties burned, the rails crooked, and the depots demolished. A prominent citizen of New York is seized and cast into prison by a Federal officer; he is released by a State court on *habeas corpus*; he is again seized: the State officers summon the *posse comitatus* to sustain and enforce the judgment of the State court; a conflict ensues; of course the New Yorkers would beat the Federals on the first round, but "the Commander-in-Chief of the Army and Navy of the United States" would head them in the end. He would only have to proclaim that as State courts and State writs did all the mischief, he would, on New Year's day, or on Thanksgiving day, or some other good day, abolish the whole catalogue. Of course it would be idle to complain that your Circuits, your Quarter Sessions, your Surrogates, your Oyer and Terminer, your Common Pleas, your Appeals, and your High Court of Errors were State institutions. The President knew that, but they were the cause of a naughty rebellion, and a military necessity required that they should be suppressed as promptly as ever his kind Kentucky mother obliged him into his good behaviour on the banks and braes of the bonny Nolin. I would the President could in these feverish times go take one long, cooling draught from the stream of his nativity, and stroll one hour

upon that pebbly shore where his innocent young life first saw the sunlight of heaven dance as if for joy upon its bosom, and once more sit, the bright-eyed angler, where his childhood drew from those clear, deep pools the finny tribe with a purer and a warmer delight than his manhood received the lightning's news of his accession to the Presidency. His policy will reddens that stream with the blood of the friends and the kindred he left behind him, until its gentle cascades will sigh for their sorrow.

The illustrations could be multiplied without number. Our country is rich in resources for military necessities. The public lands, the jury system, the lakes and rivers; taxes, Territories, *negroes*, either slave or free, could any of them, if well plied, furnish an occasion. It is a foolish thing, Mr. Chairman, this doctrine of destroying *vi et armis* the subject matter of a controversy, the material thing or interest about which a rebellion or a war is supposed to have originated. Under this new rule, when we went to war with England in defence of sailors' rights, England might easily have concluded that as she was very much engaged just then with Napoleon, it was a military necessity that she should end in a summary way the war with her spirited cousins by hanging to the yard-arm, all the impressed seamen whose rights we claimed had been violated. And Washington, finding a small speck of war on his hands when he sent out the militia under a good General to suppress the Whiskey Insurrection, might have concluded that as whiskey was the cause of the rebellion, and whiskey was made in the distilleries, he would destroy all the distilleries, and as whiskey was made of corn, he would burn all the corn, and for fear more distilleries would be built and more corn planted, he would issue his proclamation against any such building and planting. And in doing this he would not have been much further wrong than the radicals of this day; for, admitting slavery to be as bad as you say, it is yet no worse than bad whiskey.

The proclamation was a bad precedent to put in the books, and bodes evil to all the country :

" In these cases,

We still have judgment here; that we but teach  
Bloody instructions, which, being taught, return  
To plague the inventor; this even-handed justice  
Commends the ingredients of our poison'd chalice  
To our own lips."

The way to suppress the rebellion is to whip the rebels, and to do it well and quickly; but all the time offer them the whole protection of the law which you say they have violated, and which you say you are trying to enforce. I mean, of course, offer them the protection of the law, just as they obey the law. What an anomalous attitude for a nation to occupy, waging a tremendous war to execute the law, (for that is all that is meant by the suppression of a rebellion,) and claiming to suspend or disregard all law while straining the power of the Government to its utmost tension to enforce the same law!

If these measures were unconstitutional when the President and the Secretary and the Senate said so, when did they become legal? When was the Constitution changed? Or, if it has remained the same, when did the light of a new and a better construction pour like an illuminating flood upon the minds of the President and his advisers? No, Mr. Speaker, there has been no change; there has been no new light. We are only running the way of all the earth—repeating the

blunders of nations in trouble and of people enraged. The most attractive historian of modern times, in reciting how a noble lord like to have died of mortification on hearing that his son had turned rebel, and yet turned rebel himself in less than a fortnight, says :

"In revolutions men live fast; the experience of years is crowded into hours; old habits of thought and action are violently broken; novelties, which at first inspired dread and disgust, become in a few days familiar, endurable, attractive."

The profoundest investigator of modern historians, in alluding to the violent remedies adopted by Governments when assailed by powerful insurrections, and especially in regard to martial law, says :

"There may, indeed, be times of pressing danger, when the conservation of all demands the sacrifice of the legal rights of a *few* : there may be circumstances that not only justify, but compel, the *temporary* abandonment of constitutional forms. It has been usual for all Governments, during actual rebellion, to proclaim martial law, or the suspension of civil jurisdiction." \* \* \* \* "But it is of high importance to watch with extreme jealousy the disposition toward which most Governments are prone—to introduce too soon, to extend too far, to retain too long, so perilous a remedy." \* \* \* \* "It is an unhappy consequence of all deviations from the even course of law that the forced acts of overruling necessity come to be distorted into precedents to serve the purposes of arbitrary power."

Hallam lived, studied, and wrote in a country *without a written constitution*. Burke, who saw and described more clearly than any other philosopher the currents and the breakers, the benefits and the calamities, of the great convulsion in France, said, "We are alarmed into reflection." We have passed through all these stages; we have lived fast; we have become accustomed to that which was at first dreadful; we have adopted too soon, and continued too long, the violent remedies so common in revolutionary times; and now, fortunately now, we are alarmed into reflection. The sober second thought has overtaken and will save us. Mr. Chairman, I do not intend to argue the unconstitutionality of these measures with the expectation of convincing those who are predetermined to believe anything constitutional which will destroy an institution they hate, though it be recognized and protected in the Constitution. That were a hopeless task. But there are people in the country who can see the dangerous tendency of these things; and to them, and for them, I will speak. I would admonish them to consider at once the source and the cause of our institutions, and the evils they were intended to guard against.

#### THE ORIGIN OF OUR INSTITUTIONS—ENGLISH HISTORY AND PROCLAMATIONS.

The history of England is the best commentary on the Constitution of the United States. That great instrument is but the reduction to writing, with some improvements, of the best features of English statutes and English customs. It is the refined wisdom distilled by dear experience from the fierce conflict between haughty princes and a hardy, independent, and spirited race. The throne constantly sought to exercise the "kingly prerogative," and the people as constantly contended for their personal freedom, their rights of property, and for the correction of abuses in the administration.

There is but one irrepressible conflict in politics, the conflict between the aggressions of executive power and the liberty of the citizen. In these conflicts the king was always the loser, and the barons or the people always the gainers. The prerogative and the power of the crown were always lessened, and the importance

and liberty of the citizens as constantly increased. The prerogative as claimed by the king was generally exercised in the suspension of some law, or declaring something law that was not law, or levying a tax or a subsidy that the Parliament had not granted, or in granting monopolies that were profitable to favorites and oppressive to the masses. These things were generally done by PROCLAMATION, or letters patent under the great seal. The Commons, the great prototype of this House, and the people, the fathers of our people, would respectfully address, humbly petition, stoutly demand, or forcibly resist, as the state of the quarrel demanded. Out of these contests, including that of the colonies with the mother country, grew our constitution. Away back in the dim twilight of British history the seeds of our system were sown. At Runnymede they germinated, and burst through a stubborn and unwilling soil; and from that day up to Yorktown the plant has been nurtured by the blood, and pruned and guided by the arms of the first race of earth. Those seeds, sown in the days of the Edwards, the Henrys, the Johns, the Jameses, the Charleses, and the Georges, bloomed into strength and well-proportioned fullness in 1787. Ah! sir, if we would but consider how costly were the lights that Convention worked by. Their own revolution was not the only light. It was but the last. Can any man doubt that the struggles of our British ancestors were the real source whence our institutions sprung?

When the men of 1776 and 1787 came to form a Government for themselves and their posterity, they remembered that men in the old country had been legislated out of their lives and out of their estates without a trial, and without a chance to defend; that men had been punished as felons for doing that which was not a crime at law when they did it; that the heirs of dead men had been hounded and persecuted with these bills, and therefore they said:

"No bill of attainder or *ex post facto* law shall be passed."

"Nor shall any person be deprived of life, liberty, or property, without due course of law."

The power and the wisdom and the goodness of these few simple words are only felt when it is remembered how many had died upon the scaffold and on the block, how many had begged upon the streets, and how many had languished in prison, because these words had not been written and obeyed sooner. They had learned that the estates of wealthy men had been a powerful incentive with needy princes to have them convicted of treason through the instrumentality of subservient judges and packed juries; and that at common law it was an incident of a judgment and a conviction of treason that the blood was attainted, and this forfeited the estate of the criminal, and so corrupted his blood that his children could not inherit, cutting them off at once from their patrimony and from all motive to love and obey the Government; and that, in times of angry political excitement, this was sometimes effected by the more summary process of bills of attainder, without a trial at law.

They therefore declared not only that no such bill should be passed, but also that

"No attainder of treason [which followed a judgment without a bill] should work corruption of blood, or forfeiture, except during the life of the person attainted."

They had read much of arrests without warrants, of trials, convictions, and executions for political offenses, when the accused was allowed neither witness

nor counsel; of the rude visits and unjust acts under writs of assistance, and hence ordained:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger."

That in all criminal prosecutions the accused should have "a speedy and public trial," should "be informed of the nature and cause of the accusation," should have the benefit of counsel and compulsory process for witnesses, that the people should "be secure in their houses, persons, and papers," and no writs should be issued without probable cause, supported by oath, and describing the thing or person to be seized.

They knew the history of the licensing acts, and the censorship over the press which had survived the logic of Milton and Locke; they knew that good men had been imprisoned in the Tower for publishing the proceedings of Parliament, and said, "Congress shall make no law abridging the freedom of speech or the press."

They knew the history of place bills, and the evils that called for their enactment, and provided that no man holding any office under the Government should be a member of either House of Congress. They knew the history of the dreary imprisonments and bloody judicial murders that had been offered up as the reasonable service of cringing, time-serving judges, who wore their white wigs and black gowns, got drunk on claret, and received bribes in the form of presents, during the pleasure of an exacting prince, and provided that our judges should hold their offices "during good behaviour." They knew the history of subsidies, of forced loans, of ship money, and Hampden's heroism, and provided that Congress should levy taxes.

They knew the history of the London Tower, and all its long, damp, and neglected imprisonments; they were familiar with the history of the "bloody assizes," and with the doings of the Star Chamber, which the historian has told us "possessed an unlimited discretionary authority of fining, imprisoning, and inflicting corporal punishment, and whose jurisdiction extended to all sorts of offences, contempts, and disorders that lay not within the reach of the common law." We are also told that during these evil times "the crown possessed the full legislative power *by means of proclamations*, which might affect any matter, even of the greatest importance, and which the Star Chamber took care to see more rigorously executed than the laws themselves." "The sovereign even assumed supreme and uncontrolled authority over all foreign trade, and neither allowed any person to enter or depart the kingdom, nor any commodity to be exported or imported without his consent." And these proclamations the historian has denounced as "strong symptoms of absolute government." They knew the cruelty of judges whose bread was earned by construing away the lives of political opponents, and saw the splendid examples of moral and official heroism by an independent judiciary, and provided that the salaries of judges should not be diminished during their continuance in office.

These things are mentioned by way of general illustration to show the safety, aye, the necessity, of clinging to the Constitution, and the danger of going back to the days of prerogative and proclamations.

The authors of our written Constitution were familiar with the numerous

statutes that had been passed in England to secure the liberty of the citizen by securing to him the privileges of the writ of *habeas corpus*, that great command to "have the body" of an imprisoned man before an impartial judge, and said it "shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it." It required the most refined torture of language, as well as wilful forgetfulness of the historical origin of this clause, to make it mean the President may suspend it without the authority of Congress. They were familiar with the thousand attempts to make treason out of words and out of thoughts, and the attempts to define it and restrict it by statute; and when they came to define it, they copied the language and selected but two of the acts in the statute of Edward III. They knew how often the Commons had been forced to resort to the expedient of cutting off supplies to control the king, and provided that all money bills should originate in this House, the most popular branch of the Government. They knew that the royal prerogative had been exercised to prorogue Parliament when they became troublesome, and to refuse writs for a new Parliament when it was needed, and provided for the biennial election of members and the annual meeting of Congress. They knew that upon the decline of the feudal system in Europe—that system which made every man a soldier to a certain extent—many princes ran to the opposite extreme of immense standing armies, and they had learned few, if any, examples of legislative assemblies doing their work freely, deliberately, and impartially in the presence of such a power—indeed, that many of them fell into desuetude, and that the Estates of France had not met for several generations. To avoid these unhappy results, they thought they would put the army under the control of the civil power, and the civil power under the control of the people.

The coin had been debased, and James had filled Ireland with brass money; and the Convention left the coining of money and the regulation of its value, and the regulation of weights and measures, to Congress. They had heard that English jurors had been dragged into the Star Chamber, and outrageously fined and indefinitely imprisoned, for presuming to bring in a verdict of "not guilty," and made a Government where such things would be impossible while it lasted. The court of High Commission had punished for religious opinions and religious teachings; there had been Test Oaths and Acts of Supremacy; Catholics had persecuted Protestants, Protestants had persecuted Catholics, and factions of each had persecuted factions of their own party; and the Convention said that we should make no law "respecting an establishment of religion, or prohibiting the free exercise thereof," and that "no religious test shall ever be required." Good Queen Bess had by her proclamations, banished the Baptists from her realm, and Irishmen into Ireland; prohibited the culture of some vegetables whose smell she did not like; prohibited the exportation of corn, money, and various other commodities from the island, and prohibited the building of houses within three miles of London, for fear the town would grow too big; and prohibited surplus apparel to the ladies. I suppose she meant the length of skirts and the size of hoops. Those who built houses contrary to the proclamation were to be imprisoned, and the materials to be forfeited. The constitutional historian says:

"Some proclamations in this reign held out menaces which the common law never could have executed on the disobedient."

Some of their kings or queens, I forget which, issued a proclamation against emigration to New England. This profound and accurate writer again says:

"The proclamations of Charles's reign are far more numerous than those of his father. They imply a prerogative of intermeddling with all matters of trade, prohibiting or putting under restraint various articles and the home growth of others or establishing regulations for manufactures. Prices of several minor articles were fixed by proclamation, and in one instance this was extended to poultry, butter, and coals."

So the miners of Pennsylvania and the good dairy women of the Western Reserve and Goshen and Herkimer, and graceful belles with long trains, will see that negroes are not the only things that can be reached by proclamations.

Sir, what does all this dry history mean that I have been quoting? It means that we have a constitutional and a limited Government; that there was much wisdom manifested in making it; that there was much need for its being made; and that there is as much need for its being obeyed now. It is worthy of all the encomiums that have ever been passed on it; it is not commonly remembered how much it cost; and, in the language of the President, in his first message to the extra Congress, I would say :

"Whoever, in any section, proposes to abandon such a Government, would do well to consider in deference to what principle he does it—what better he is likely to get in its stead—whether the substitute will give, or be intended to give, so much of good to the people. *There are some foreshadowings on this subject.*"

Ah, sir, those foreshadowings! I would they were all on one side.

The President, in his last message to this House, admits that slaves are property, and that emancipating them is destroying or divesting property. Then I would be pleased to be informed, if he can take my slave, by what system of reason do you convince me he cannot take my horse or my plow, or the land I cultivate with that horse and plow? I apprehend the only reason will be found in the fact that there is in this country no great political party who hate horses, plows, and land.

#### CHARACTER OF OUR INSTITUTIONS.

When the Convention of 1787 had completed their work, and the people had ratified it, they had given the government as little power, and the citizen as full liberty, as were at all compatible with the true relations that must subsist between good government and well protected citizens. The Government was as mild as it could be and be strong enough to perform the duty of protection. The citizen was left as free as he could be left and owe allegiance and obedience to a good Government. Having been born of revolution, our fathers felt the pains of such a political deliverance, and tried to frame a plan by which their children might forever be saved the necessity of a resort to force and bloodshed. They did this by referring all things to the people, the source of all power, by stated recurrences to the ballot-box. The plan is perfect—all it needs is following. How mild, how beautiful, how bloodless, how powerful the remedy!

But the rebels forgot this feature in the wise labor of our fathers. They went to war when voting was all that was needed—and not much of that, for there was little to be complained of. And the Administration, in resisting this wicked war, has forgotten the useful and bitter historical experience that culminated in the American written Constitution, and in a few months we are carried back to the days of prerogative and proclamations. There is another thought in this connection. While this is all so wrong, it is not so wonderful. The ameliorating tendency of the conflict between the people and the crown, in England, had gone

nearly as far as it could go with any good effect; and the American Constitution was putting in practice a theory about governmental power and individual liberty so nicely balanced that there was but little margin left on either side, and any sudden change that was also great must necessarily be for the worse, by running forward into anarchy or backward into despotism. Secession, the spirit of disintegration, does the former at one bound, while the Government, in its anxiety to resist so great an evil, has accomplished the latter in about three strides.

If the tendency of the controversies between our race of people and their governors—for I am considering the American Constitution as but a vigorous offshoot from the great stock of British experience and of British constitutional history—had been to moderate and limit executive power, and elevate the power and importance of the people; and if, in 1787, that historical process had fully ripened its legitimate fruit, by reaching a point beyond which good and wise men would not go, when they had it in their power to go as far as they pleased, it is palpable that a renewal of armed strife between citizen and government, for which our race has been so renowned, can result in but one of two things: either the process will degenerate into a mobocracy, or the pendulum will swing back a few centuries toward absolutism. An armed people, succeeding against such a Government, would likely come out of the contest more a mob than a Government; and such a Government succeeding against a rebellion so powerful as this, would come out of the contest with its powers enlarged in practice and precedent, if not in theory. It is in the nature of things. The great blunder, the great crime of the rebellion, was to inaugurate such a conflict. Let our wisdom be to resist and suppress the rebellion, if it be possible, without invoking the assistance of arbitrary power. It is a selfish genius, and having rendered us the asked-for help in so great a matter, would surely claim the pleasure of ruling us for at least a season in return for the aid. If it be said this is an emergency not contemplated by the Convention, I reply that is begging the argument and criticizing the Constitution; and I further affirm the truth to be, that nearly all the wrongs and oppressions against which the framers tried to guard, were done by government in times of rebellion, *and some of them were done by the individual States on the persons and property of American Tories during the revolutionary war.*

#### MARTIAL LAW AND ARRESTS.

Mr. Chairman, I have directed the main part of my argument against the emancipation proclamation. But while I have noticed that gentleman from the North, not agreeing with the President, are sufficiently earnest and sound upon this question, they are even more sensitive upon the subject of the proclamation of martial law and arbitrary arrests than gentlemen from the South. This is natural, and easily explained. There are two reasons why we are less sensitive than you: one is, we have seen more of it, which is the bad reason; and the other is, we have had more use for it, which is the good reason. You do not know so well as we do the stuff this rebellion is made of. You have not lived in communities half Union and half rebel, swarming with spies, emissaries, horse-thieves, cut-throats, and, what were far more honorable and less dangerous, returned rebel soldiers beating up for recruits. You have not lived in towns where old friends greeted you with a demoniac stare or an averted face, and where you

could know the news of a disaster to our arms without hearing it and without reading it, except as you read it in the malignant gleam of an infernal smile that lit up the wrinkled fronts of your enemies. I have quoted the Constitution on this subject, and referred to its historical antecedents. I would have the instrument obeyed to the letter just so long as it can be done without surrendering whole local communities to the fierce power and malignant vengeance of local conspirators maddened with personal enmity to which the power of an invasion would be a blessing. Rather than do this I would fling away all written law, respect the law of humanity, resolve that society into its original elements, meet force with force, and conquer my assailant or be destroyed by him.

The rebel who earnestly believes in the theory of secession has renounced all government. Society or local communities may sometimes be placed in such sudden and dangerous emergencies that, like an individual, they cannot tarry for the forms and the officers of law, but may slay the assassin then and there. This is self-defense. But the act must be confined to the occasion that calls for it, else it becomes murder. If you had seen an aged minister of my church sleeping night after night upon his musket, in our company of Home Guards; if you had seen my Circuit Judge driven to bay, and forced in the court house where he had practiced law and administered justice for twenty years, you would better understand some of the emergencies in which we have been placed. We have generally been right in our arrests, because of these emergencies. You are right in your opposition to them in your States, because no such emergencies have existed with you. What I claim is, that such things be confined to their local and temporary necessities, and that in no event can there be any necessity for a rule applicable to twenty million loyal people, as is the President's martial proclamation. And there is this distinction to be observed: whenever men are constrained to these irregularities, they necessarily do them as *men* thrown upon their natural rights, and not as *officers* of a regular Government. The exception can never apply to large populations, or to the operations of a great Government; for then it ceases to be an exception, and the Government is revolutionized. The militia and Home Guards of Kentucky have made many of these arrests. Generally, we were right; sometimes we were mistaken, and hardships resulted. I never had to order an arrest. I had to hold the men to keep them from arresting half the rebel population. The President has come into this House—at least his friends have brought him here—and asked for *indemnity*. I voted against it. I ask for no indemnity for myself and my friends. We assumed the responsibility then; we will take the consequences now. I hope and believe the time for these things has passed. I hope there will be no more of it.

But to return to the Constitution. Can Congress or the President, or both combined, adopt such a rule as this proclamation of martial law? The words "no person shall be held to answer," &c., embrace everybody. The exceptions "in cases arising in the land or naval forces, or in the militia when in actual service," evidently mean offences committed by persons engaged in such service, and against the rules and articles adopted for the government of those arms of the service, and for which they may be held to answer under the Articles of War. But to hold that this language means *any cases* which the President may direct, shall be punished *by the land and naval forces*, is an outrage upon the plain English of the thing. After providing all these safeguards, and being at so much pains to

limit and define treason, what would the fathers have thought if they had been told that their sons not in the land or naval service would be tried and punished under a military commission for "disloyal practices?" What are disloyal practices? What Constitution, statute, or decision defines them, so that the defendant will know how to answer? Is it using rebel arguments, expressing rebel sympathies, telling rebel lies? There must be something short of levying war or giving aid and comfort that will amount to disloyal practices, else the old words would have been used and would have answered. If anything short of the definition of treason will make out a case of "practice," *how much short* may you come? Are we not going back to the days when the Commons felt bound to petition Edward III to define treason, and which led to the adoption of the statute bearing his name? I repeat the question, what are disloyal practices? The Constitution is silent. The military commission will determine. I humbly beg them they will not determine that my speech against the danger of using the term was itself a disloyal practice. What is the punishment for disloyal practices? The law is silent. The commission will determine; and the offender will learn to his satisfaction when he hears the rattle of a platoon of muskets. I am not defending the bad men whom the proclamation would catch, but only the good men whom it would oppress. If I and my neighbors choose to object to the forcible emancipation of four million slaves, I do not want us dragged next day before a military commission—

"Drest in a little brief authority," \* \* \*  
 "With eye severe, and beard of formal cut."

#### WAR POWER.

But we are told that these measures come within the WAR POWER of the Government. I have to reply, that if they did, the power of making war is vested in Congress. But we are told that the Constitution furnishes to its administrators two sets of powers—one for war and one for peace. Granting this, does it help the argument? It is a platitude that means nothing and proves nothing, for the question still remains, what is this war power? Where does it come from? What is its nature and extent? Does it come from the Constitution, or outside the Constitution? Some are so frank as to admit that they rely on the war power of sovereign nations as it exists now, and as it existed and was understood before the adoption of our Constitution, under the international code. I admit this view of the war power as it affects or controls the exercise of that power against foreign nations; and that when Congress has declared war, the President, as Commander-in-Chief, and his generals in the field, are to be governed by this code in the conduct of the war. But is not this dangerous ground? Is it not admitting too much? Whether it would only be treating the rebels as belligerents, or recognizing them as a nation, I will not stop to inquire. But this is no foreign war. We all claim that the enemy is not a foreign or an independent nation, but only large masses of our own citizens engaged in a wicked rebellion. The argument on this score fails. Indeed, I doubt very much whether this is a war at all in the sense in which the Constitution uses that word, except in the one expression of "levying war." It has already been decided by Federal judges that the word "enemies," in the clause "adhering to their enemies, giving them aid and comfort," means just what it did in the old statute from which it was copied—foreign enemies, and not domestic traitors.

This is a gigantic effort of the nation, by the use of the nation's strength, to enforce the nation's laws against citizens of the nation, in rebellion against those laws. The conduct of these citizens brings them within the exact definition of the crime of treason as given by the Constitution, and the war is an attempt to arrest or disperse them as traitors. The President has called out the *posse comitatus* of the nation to assist him; and if rebels are killed in his attempt to arrest them and to enforce the law, it is their own fault. If, when they are arrested, they are not tried and executed as traitors, but are held and treated and exchanged as prisoners of war, they owe their escape, not to the letter of the law, but to an enlarged and enlightened policy, a uniform rule that has sprung from the custom of all nations, republican and monarchical, not to punish immense masses as you would one man, but to conform the conduct of the strife to the principles and policy of that general amnesty which all nations are sure to grant at the end of such a war. It may be retorted that by admitting that all these armed rebels are traitors, and capitally punishable under the law, and yet insisting that when captured they ought not to be hanged as such, but to be treated and exchanged as prisoners of war, as the Government really does, we have admitted that a case has arisen where the law and the Constitution ought to be neglected or violated. Not at all. The pardoning power is in the President, and he might, I apprehend, if a prosecution were pending, enter a *nolle prosequi* through his attorney at the bar.

Then I claim that, in waging this war, the President has all the power the Constitution gives him, and no more. I go further, and claim that the Constitution gives more power—call it peace power or war power—over a domestic rebel than does the law of nations, and gives more power over a domestic rebel than it and the law of nations combined give over a foreign enemy. Gentlemen do not gain anything by adding the war power of nations to the written and expressed power of the Constitution. That instrument gives ample power to suppress a rebellion, to enforce the laws, and to *punish capitally the rebels who resist the law*. Not so under the war power as derived from the law of nations. You have the right to kill your enemy on the battle-field, but no right to hang him when you have caught him. Under the Constitution you may confiscate the property of a rebel for the term of his life; under the international code, you cannot take the private property of alien enemies on land, though they be soldiers and officers taken in acts of national hostility. Then applying the rules of international law to this emancipation proclamation, and it is unauthorized; because it destroys at least \$1,000,000,000 of private property, and does this as a war measure, without trial or office found. Sir, without stopping to give authorities, without referring to the book and the page of Kent, Wheaton, Vattel, Grotius, Puffendorf, Bynkershoek, and Montesquieu, I affirm that the rule adduced from these great writers, and the rule adduced from the modern customs of civilized and Christian nations, is that you cannot destroy private property on land. You can seize it, and even destroy it, when it has had a public and hostile character imparted to it by being used in the war against you. The exceptions to the rule I have laid down are caused by present, urgent, and overriding necessity—such necessity as appertains to the immediate conduct of a battle or a campaign, as when Washington destroyed a house that his batteries might play fairly on Yorktown. It is in the same sense that on certain occasions a general would be either a fool or a traitor to send for a justice to issue a warrant and a constable to execute it; or, having dispensed with

their assistance, would allow the nearest judge to take his prisoner from him under *habeas corpus*, and send him over to the enemy with maps or secret information. The cases are easily distinguished. It is only hatred, or the love of power, that will magnify the exception into a rule of law.

What I affirm is, that it is impossible that the exception to the rule, in the form of necessity, should ever embrace so vast an amount of property, scattered over so vast a territory as the slaves in eleven States, owned promiscuously by rebels and loyal men; or that it can embrace twenty million free people in twenty-two loyal States. I repeat, sir, there is nothing gained in the way of power by casting away the Constitution and taking up the laws of nations.

#### MILITARY NECESSITY.

It is constantly urged, not only that necessity is one of the rules of war, but that the destruction of slavery has become a necessity for the suppression of this rebellion. This is more honest and more definite. It is coming to the point. I will not argue the fact of the necessity, but only give my opinion that if the rebellion cannot be suppressed without this, it cannot be done with it.

I only desire to call the attention of the country to this doctrine of war power derived from necessity. As I understand the doctrine, it is this: In a state of war, foreign or civil, the "war power" may do what is *necessary* to overcome the enemy. The President, then, the Commander-in-Chief, gets his power not so much from the Constitution, which he swears to support, as from the war power; and the power thus derived is measured not so much by any written rule as by the necessity of the particular emergency; and the emergency and necessity, and the fitness of the remedy proposed, are all determined by him.

Then it has come to this, that our Constitution is a system of government for the piping times of peace, but in the midst of arms all its laws are silent. It has come to this, that it is a good law as long as it is obeyed, but no law at all when violated by a traitor. The first rude blast, or even a small speck of war, suspends the Constitution, and substitutes a higher law, the law of necessity—one man being the judge of the occasion, the necessity, and of the measure of harshness or destruction demanded. Whatever else may be said of the proposition, I like its plainness. I like to deal with an adversary whom I can understand. He gives us a despotism instead of a regular and limited government. There is no escaping the conclusion. Surely it does not require any argument to prove that this principle is as dangerous to one section as to another. I am not resisting it for the harm it would do the plotters and doers of treason. Morally, they deserve almost anything that can be inflicted. But I resist it for myself, for my children, and for the loyal people of my country. The advocates of this higher law theory are as much rebels against the Constitution as the Southern secessionists. The only difference between them is that the Southern rebel had the pluck to take up arms in defence of his folly and wickedness, while the Northern rebel is defending his in his stump speeches, his editorials, his sermons, his prayers, and his votes in Congress. While he is "singing psalms through his nose," his Southern ally is sleeping in a swamp, scaling a mountain to the tune of the Marseillaise, or dying in the last ditch.

When the Tories, under James, persecuted the Whigs, the Whigs complained

bitterly of arrests without warrant, that they could get no copy of an indictment, that they were not allowed counsel and sworn witnesses, that they were imprisoned without a known cause, and kept long in prison without a trial. The Tories answered, "necessity and public danger." When James fled the realm, and William of Orange ascended the throne, the tables were turned. The Jacobites and Tories constantly intrigued for a restoration, and they in turn were found complaining of imprisonment without writs and without overt acts, that they could get no specifications, and were allowed no trial. The Whigs rather felt the force of the complaint, but often replied, "necessity and public danger."

And so it has ever gone. The fault is in human nature, and Governments are to control human nature. There is much may be said in favor of the arrest, the banishment, and even the destruction of an unprincipled conspirator, against whom little or nothing overt can be proved, and yet who, as everybody knows, is plotting for the destruction of the Government whose protection he is receiving. The danger is, that if these things are not done according to rule—in our case the Constitution—the necessity will always be found on the side of the ins, and the hardships and mistakes on the side of the outs. Can we not rise above the jealousies and the hatreds of the hour, the more animal part of human nature, and lift ourselves to that elevation of view where there is a clearer air and a wider range—where we can see the faults of ourselves as well as the sins of the rebels? We are struggling with contending currents; we are in the fog, and we are fretted. From the neighboring heights we can see where the one will lead us, into a placid harbor, laden with the prosperity of a thousand interests, and girt round with the granite walls of the Constitution, where the breath of storm can never light; the other, into the maelstrom of anarchy and violence, whose vortex we can only escape by fleeing to the dead sea of despotism, and anchoring ourselves firmly, submissively, forever upon its stagnant and fetid bosom.

### A BAD POLICY.

Waiving the question of constitutionality, the proclamation of emancipation was an impolitic, an unwise, and a frightfully unfortunate measure. It consolidates the people of the Southern States and makes a unity of them, and imparts to them the energy of despair, with a show of justice in the eyes of the world they never had before. In the beginning, they raised the false cry that they were striking for their homes and firesides. Shall we make that true which was false? Many Union men, who had firmly resisted the tide of events and of public opinion up to that time, gave way and succumbed. Some of the most melancholy instances of this have occurred in East Tennessee among the most loyal, the most neglected, and the most oppressed people on this continent. It confounds and embarrasses Union men in the border and Western States. They had a thousand times argued, nay, some of them had promised no such radicalism would be adopted by the Administration; and cited the inaugural, and the messages, the Sherman and the Crittenden resolutions, in proof of their position. Oh! sir, could members only see the cruel advantage that proclamation gave the rebels and rebel sympathisers over the friends of the Union in my country, they would go in a body and demand of the President—who they claim is a good man—that he recant the unfortunate order. Considering it only as a war measure, it is not merely a

paper wad. It is more. It is a blunder and an injustice that injures only the friends of the Government. We had worked manfully against the tempest, but now—

“You mar our labor,  
You do assist the storm.”

How is this proclamation to be enforced? It cannot be enforced in a given State or district until our arms have possession of the country. And when we have acquired possession and control of a given district of country so that we can enforce the laws, that is all you want, without the proclamation, if you were honest in passing the Crittenden resolution, the best penned resolution that appears on the record of our political history. It is equally useless, premature, and even dangerous, where we have no possession and no control.

“The man that once did sell the lion's skin  
While the beast yet lived, was killed with hunting him.”

What use, then, is intended to be made of the proclamation? Is it the policy of him who ought to be the political saviour as well as the President of the Republic to make the negro his apostle, to go before him crying aloud in the South, baptizing the country in blood and fire to preach the coming of his great salvation? Considered in the light of a threat, it is a poor compliment to the hereditary spirit of the races from which we are all sprung, to the blood that courses through all our veins.

#### SERVILE INSURRECTION.

But, Mr. Chairman, the most cruel and alarming and abhorrent feature of this thing is the servile insurrection and war that must follow the attempts to enforce it. We are told there is no invitation to the negroes to do this. In terms there is not, practically there is in the offer of freedom, and in the promise that nothing shall be done to resist their assertion of that freedom. Others say it is not meant that way, and need not and will not result that way; that it is simply freeing a certain class without telling them to do murder. Mr. Chairman, is it intended to add insult to injury? Are we to be mocked at in this way? To be told that such a measure as this, offering sudden emancipation to such a class, against the prejudices and the admitted legal rights of such spirits as Southern rebels and Southern planters, will not lead to bloodshed of the most revolting character known to the history of the world! Others more honest, or perhaps only more impudent and devilish, tell us plumply: “of course there will be insurrection and servile war; but whose fault is it? Did not the rebels bring on the war, and is not servile insurrection an incident of such a war; and have we not a right to ask all human beings to assist us in suppressing such a rebellion?” Great God! has it come to this? Could I call up the spirit of a Chatham to this floor, or borrow the power of the living orator to hurl only one thunderbolt at this great iniquity! When our fathers severed the ties that bound them to the mother country, they stated, as one of their complaints, that the king had “endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.” And now, our Government invokes the assistance of more than three millions of beings who, the friends of the measure have long been telling us, are made barbarous and revengeful by a long course of oppression, and whose modes of war, as far as we can

learn from Africa and the Indies, are as much worse than the red man's as the red man's is worse than the white man's. What will the world think? What will be the "opinion of mankind," for which we ought always to have a "decent respect," when they compare the complaints of our fathers with the conduct of their children, especially when they remember that the rebels inherited their much hated property from their fathers, who bought it in large part from your fathers, and paid them in gold and silver and tobacco, the three circulating mediums and legal tenders of that day. Are gentlemen so bent on a given policy toward slavery, and so maddened by hatred to slave owners, that they will go any lengths, regardless even of the friends of the Government in the doomed districts? Think of those friends. Remember that the weeds and the flowers are closely mixed, and be careful that in rooting out the one you do not tear up the other. It is a proclamation to

"Pour the sweet milk of concord into hell,  
Uproar the universal peace, confound  
All unity on earth."

The confiscation acts of last session had already taken away all the property of rebels. All it needed, at least, was to be enforced; and, therefore, all that is left for the proclamation to effect is to take away the property of Union men. To my mind it is not the value of the property thus destroyed that is most objectionable; it is the principle, or the violation of principle, involved. My own opinion is, the rebels have committed the act of bankruptcy in regard to that species of property, and have made it very doubtful whether the assets will pay the costs of a settlement under a commission from any Government. If gentlemen could have been in Kentucky to see the gloom on the faces of Union men, caused by this proclamation, and the delight that beamed from the faces of rebels when that edict went forth, they would entertain different views of it as a war measure. And why did it cause these different emotions in the two classes of our people? Because one saw and felt it as the greatest blow against the Union, and the other saw it was an engine of inexorable logic in their hands.

#### MY OWN POSITION.

For myself, I have no difficulty in concluding that the Government of the whole Union, with all its power, and all its guarantees, is worth more to me and my posterity and to the whole country than the institution of African slavery. Therefore, if I had to sacrifice one to save the other, I would crucify slavery, and save the Government. In other words, if by the force of anything chargeable to slavery, I had to choose between them as between two things of different value—if I had to take the Government without slavery or slavery without the Government—I would say of slavery, as some gentlemen long ago said of the Union on this floor, "let it slide."

But at this point we differ with the radicals. I deny that in any possible contingency can the destruction, by the Government, of the institution in the States become either a necessary, a wise, or a conducive measure in preserving the Government. I go further: I affirm that any such destruction is, *pro tanto*, a destruction of the Government, or such a revolution in its principles as that it does not remain the same; because the Constitution not only recognizes property

in slaves but provides for the security of the master's interest in the labor of his slave, and makes it the duty of the President to take care that the laws be executed. I deny the necessity and the fitness of the measure, because I deny the incompatibility between the two systems of labor. I deny that the slave system was the cause of the rebellion, and affirm that if it were, its destruction would not be a legitimate mode of warfare, as recognized by the laws of nations; and denying that such destruction can in any event be a political or a military necessity, or a constitutional measure, I can in no event be in favor of such a scheme as the President's proclamation embraces. In this statement of my own views I have purposely used the word Government instead of the word Union. It means more: it is the Government; the Constitution, that makes the Union. There can be no good Government with secession recognized and accepted as a principle of political science. And there can be no Union but the unity of despotism, or a Union for bloody vengeance, under the principles of the proclamation. Nor would I ever surrender to the rebellion, based as it is upon secession. If I am told that such an effort, so great a war as will be required to reinstate and enforce the Constitution and laws all over the States and Territories of the Union, would exhaust the national vitality and the resources of both parties, I reply that neither party will allow it to come to that. The exhaustion of war restores the reason and cools the passions of belligerents, and generally results in an accommodation that has more of the name than the essence of a compromise—some platitude that is soothing to the feelings. But if it must be otherwise, then let it be. Nations in their dangers and duties are very much like men. A nation had better die by fighting than die by rotting; and a man had better risk breaking his neck in the attempt to extinguish the flames that consume his dwelling than to lie supinely down and be consumed in the conflagration.

#### EMANCIPATION AND COLONIZATION.

To return to the subject of emancipation as proposed by the President. No clear solution of it has been offered. Emancipate four millions of rude, uncultivated people, who, while slaves, labor successfully only under the direction of masters who understand them, and labor scarcely at all as freemen, and then only under the compulsion of want, and what will you do with them? What have you done for them? What have you done for their white neighbors? We are told they shall be colonized. Where will you put them, a larger population than the thirteen colonies contained at the Revolution? You have no vacant territory for them that they could subsist in, none at least which the white race from any section would allow them to possess for two generations. What other nation is going to surrender its territory for such a use, or allow its own population to be submerged by an inundation from such a black sea? You talk about Central America and South America as if they were already yours, and you were governing them as territories or colonies. What diplomatist have we who could successfully conduct a negotiation with any foreign Power for territory, and answer the retort that we were seeking to thrust upon them a population we would not keep among ourselves? What will the expense be? Count the cost of purchasing them a country, the cost of compensating loyal owners, the cost of transportation, and of support on the voyage and for several months after they have landed on the shore to which you have exiled them, (which is a necessity in the scheme,) and put it in all

at only \$250 per head, and you have the sum of \$1,000,000,000 for that. Add to this the cost of the war, which will not fall short of \$2,000,000,000, if just claims are all settled, and stolen sums all counted, and we have the enormous sum of \$3,000,000,000, or about one hundred dollars to every white man, woman, and child in the country. The farmer of small means, who, with himself, wife, and children, counts ten in family, would shoulder and pay \$1,000 of it, or pay \$60 per year *all his life* for the interest on it. And all for what? To pay for the Sunday rhetoric of a horde of canting, white-cravated divines, who know nothing of slavery and less of religion; who thought they were called to preach Christ and him crucified, but have shown it was only to scream the negro and him emancipated. Would not that \$60 be better spent on that manly little boy whose first impressions are that life is a prolonged struggle with adversity and taxes, and that Government is but a machine for extortion—thus preparing in the child a man for treason, strategy, and spoils! Would it not be grateful to that thoughtful or melancholy mother to spend that \$60 a year, or a fourth part of it, in educating her sun-browned little girl, who is every week robbed of fourteen hours of balmy sleep or joyous play in order to prepare the flax, the wool, or the cotton for the family clothing?

The scheme of the proclamation and the message are alike impracticable; and, if they were practicable, the people of this country, either North or South, are not going to tax themselves to pay the interest on such an enormous debt contracted in the perpetration of so enormous a folly. Aye, sir, for more than folly—for the extermination, gradual though it be, of a whole race of people. For I again ask, what will you do with them? Will you send them North, or even allow them to go there? If you do, they will be incontinently driven out by your outraged constituents. I call as witnesses the laws and constitutions of many Northern States on that subject, as well as the acknowledged aversion to dwelling with them, socially or politically, on terms of equality. Should they be allowed to go and remain there they would soon become a marked and an outcast people. They cannot become the owners of your soil or the schoolmates of your children until your tastes are changed, although some fools would have them to become members of your families, and to perpetuate at once your politics and your blood. They would not be admitted as witnesses to prove acts of oppression against them by those bad white men who always seek to speculate or presume on the misfortunes of others. They would become your hewers of wood and drawers of water; they would be your slaves practically, though not in name—a slavery with most of its hardships and none of its kindlier features, for it would not be your interest, as it is with us, and you would not be bound by law, as we are, to visit them when they are sick, feed them when they are hungry, and clothe them when they are naked. They would either become vagabond strollers from house to house, as hunger and cold pinched them, or by the repulsion of social tastes, and the jealousy, if not the interests, of your intelligent free white laborers, become crowded into squalid settlements of their own, and, in either event, would become rapidly extinct. You will thus have become the exterminators of a race you would have freed and made equal to their masters. If they cannot be transported, and if you will not receive them into your own arms, what else will be done with them? Shall they be left in the country where they were emancipated, with their untamed passions, made fiercer by sudden liberty, brought in contact with the prejudices, the outraged feelings, the violated rights, and the natural and educated feeling of superiority of their late masters? Would the true friends of either race desire this?

## WAR OF RACES.

In that condition, one of two things would overtake them; either they will silently and gradually resume their places under their masters, when the labor of your love shall have been lost; or else, what is far more probable, it will result in a war of races between the two populations. In this event, do not flatter yourselves that the hatred and the thirst for vengeance, which some of you feel, would be gratified in the success of the negro. In any armed contest between him and the white man, the negro will go under and out of sight—and then, what would the two factions have to agitate? Having agitated the country asunder, and agitated the negro out of existence, and proclaimed away the liberties of the people of both sections, (for Mr. Davis issues proclamations as well as our own President,) it is to be hoped they would rest for a season.

But suppose a different result. Suppose the black insurrection, aided by the Army and Navy of the United States, should prove a success. You know very well that the late master and the newly made free negro will not live together. Between violence and emigration, the white man would disappear from a large skirt of country on the Gulf, and we would have a neighboring black republic, or a number of colonies very difficult to govern. And then what? Do you not know, does not all history teach, that as he remains indolent or becomes predatory in his habits, and as your children become crowded for room, the descendants of the conquerors of Philip would find no difficulty in concluding that the black man had no more right to the savannahs of the South than the red man had to the hills and valleys of New England? If you do not know this, you have not analyzed the blood or studied the history of our race. Why is it that the Northern man going South makes the most rigid taskmaster? Not because he is a meaner man, but because he does not understand the negro, and therefore does not sympathise with him as the Southern man does. Then view this gigantic scheme of the President as we will, and its results are only evil to the white man and destruction to the black man.

There is this difference between me and the advocates of violent emancipation: they hate slaveholders more than they do the Evil One, and love their philosophy more than they do the providences of God. I hate robbery, murder, arson, rape, and infanticide, more than I would hate slavery were I myself the slave; and I love the providences of God more than I love that system of servitude He has permitted in that country where He has cast my lot. I have more confidence in His wisdom, His day, and His mode, than I have in abolition platitudes. The control of individuals is with Government. But I believe the location and disposition, the destiny, the increase or demise of whole races, are things above the reach of finite wisdom, and only in that of the Infinite One. I therefore refer this thing to His hands, seeing and feeling it is too large for my mind.

Mr. Chairman, how is this proclamation to be enforced without the assistance of the negro, and what kind of assistance will he render? The scene would attract the pencil of genius, did it not freeze and repel the affections of humanity. In the foreground stands the President of the United States, the Commander-in-Chief of the Army and Navy, sword in hand, bearing full high on its flaming point the proclamation of freedom to a whole race, who can only read it as an invitation to

insurrection and servile war. The body of the canvas is filled with an innumerable host of these beings, intoxicated with blood and bloody instructions, flourishing the torch, the axe, the knife, with ruin leaping from their eyes, and lust hanging upon their lips. In the midst, in painful relief, are seen the flames of a burning home, illumining and making more ghastly a scene which the shades of night had vainly offered to screen from the view of man and of God. In the garden lies hidden a murder-stricken child clinging to an outraged mother, and pleading for that protection which an absent father and brother alone could give. Others are dimly seen fleeing and crouching in the swamps and the brakes which kindly offer them a place to starve, to sicken, and to die. It is to those who, in the language of a great judge, "from their tender years or other disability cannot be loyal or otherwise," that this proclamation says:

"But if you frown upon this proffered peace,  
You tempt the fury of my three attendants,  
Lean famine quartering steel, and climbing fire."

In the background are seen a vast army of men clad in the habiliments and the armor of United States soldiers, with the blushing banner of their former renown drooping above them, a vast and noble navy riding at anchor hard by, and all with orders not to resist but to aid in this horrid tragedy. The picture grows too dark—nay, too red, red with the flames of incendiarism and the blood of assassination—to be looked upon with any other emotion than that of deep and profound and unutterable horror.

Sir, it had as well be known now, it had as well be stated plainly, and it were well for all concerned if the powers that be would believe it, that the country does not intend to submit to these things. I do not mean only that the loyal men of loyal slave States are objecting—I mean what I said, *THE PEOPLE*; and the late elections justify me in the breadth of the language. Neither am I flinging off a cheap edition of that stereotyped, ill-natured, and imprudent, not to say low bred threat of secession, that has so often been flung into the faces of gentlemen on this floor. Whatever else we may do or be driven to by your folly, we do not intend to secede. Some of you try to goad us into secession. We will not please you so much. We will have no such government as the Southern Confederacy, based as it is upon the principle of licensed disobedience of law and the voluntary disintegration of empire. No, sir; we can do better. *THIS GOVERNMENT* is *our* Government as well as yours, and we mean to have and to demand all our rights under it. In making this demand we will appeal to the great conservative party of the North, and they will come to the rescue. The victory promises to be a bloodless one. They will beat you at your own homes. The decree has gone forth that the Constitution must and shall be saved from all its enemies, among whom I class many of the friends of the proclamation, who are friendly to their country, but with more zeal than knowledge. We desire, aye, sir, we are determined that the rebellion shall be suppressed, but we are equally determined that our own liberties shall not be suppressed with it.

## THE HOPE OF THE COUNTRY.

Mr. Chairman, my yet young heart longs for the glorious Republic of my boyhood's affections, that glorious "no North, no South, no East, no West" of but a few years ago; those better days of better construction of better feeling, and of loftier eloquence. What is now the hope of this country? Assailed on one side by higher-law-ism and war-power-ism; assailed on the other by secession, perjury, treason of the foulest dye; the Constitution defied and contemned by a powerful insurrection, and the same Constitution being cast aside or avowedly disregarded by a dominant party, as being insufficient for the work of its own preservation; what, I ask is our hope? On one side is the spirit of dissolution, a political struma that would soon slough away the vitals as well as the territory of any republic in which it is adopted as a legal right, or received as a truthful principle in politics. There is no hope in that direction. On the other we have acts, assumptions, measures, that lack only the name to make the Government an unlimited depotism. There is no hope in that direction. Then where is the hope of the country? Sir, it is in that great middle conservative party that will resist, and is here to-day to resist both extremes, both heresies, both rebellions against the Constitution. And I thank the fates that rule us that this element is stronger in the country, and will be stronger in the next Congress than it is to-day, in this Hall.

If I am told this is too much to be undertaken in the present conjuncture, and that the elements of rebellion and higher law being practically in co-operation, though seemingly opposed, make a power for aggression too great to be resisted by the conservative element, I have only to respond, be it so. If so great madness has overtaken the country, let us find it out. It is said to precede destruction. Let us make an honest and a brave effort to save the country; and if, making it, we go down, the Constitution—mark my words—the Constitution and the liberties of the country go down with us. The great problem will have been solved—the great experiment will have proved a failure—and the people, who will have failed to govern themselves, will then deserve to be governed by a master. In this great upheaval, this commingling of tempest and earthquake, we have selected our chart. It is simple and truthful. The polar star that guides us on our way is the UNION OF ALL THE STATES, and the solar sun that lights us on that way is the CONSTITUTION that makes that Union—the great center around which they cluster and upon which they hang. If on this strong and simple platform, including the provision for amendments, we cannot ride the storm, then the fates are against us; and when we go down, we will have one only consolation—if such it may be called—that, though secessionists and traitors, fanatics and higher law men have triumphed over the Constitution and the liberties of their country, they will also have reaped the reward of their own folly, for they, in turn, will be speedily and bitterly crushed under the ruins of that great temple whose pillars they undermined and pulled down. I have another hope. It is in a return to reason, good promises, and the Constitution. Any man may cling to an error; a brave man becomes braver, a generous man more generous, in renouncing it.

## THE DANGER.

These people both North and South, though more at the South than the North, are threatened with a danger which many of them do not suspect. They may yet fulfill a great historical rule. I believe it was Washington who said there was a natural progression from liberty abused to licentiousness into anarchy, and from anarchy into despotism. There are volumes of history and political philosophy compressed into that observation. There is a limit to the endurance of human nature. When a people have become wearied, war worn, disgusted; when their substance is consumed, and the weeds and the bramble have conquered the garden, the field, and the orchard; when the voice of the little ones is heard crying for bread, and mothers that weep, refusing to be comforted, because their children are not: when the iron of war has pierced the hearts of the strong men, and their stout spirits are broken, there is always a murmur heard abroad in the land which a grasping genius is quick to detect and improve. It is, "give us any government rather than none; give us peace on any terms; give us the protection of a master rather than the fury of a mob." A *Protector* offers himself with an army of reckless, hungry soldiers at his back. How winning the name! But it has always lacked only another name to make him a monarch or a despot, and the people have scarcely surrendered before the name, the crown, the power, are all assumed.

## MR. CRITTENDEN.

Mr. Chairman, the presence here of my venerable colleague, who sits before me, ought to admonish us. Here he lingers, the contemporary and the compeer of the great Commoner, who would "rather be right than be President;" the great Ex-pounder, from whose teachings I learned to condemn this rebellion on principle; the Iron Will of the Hermitage; the Old Man Eloquent; and that historical Senator who for thirty years illustrated the debates in the other end of the Capitol with facts. Here he stands, one of the few yet unbroken links between the calamities of the present and the glories of the past, raising his voice ever and anon, and pleading earnestly, with great arguments, for the Constitution: with one arm entwined around his bleeding storm-tossed country, and the other around the mausoleum of the great dead, as if he would anchor the one to the memories of the other. Will I excite a sneer from the disciples of higher law by invoking for my country the blessings of those memories, and pleading with them to hearken to the lessons of law and order, of patriotism and eloquence, that come to us from the tombs of those who, dead, yet speaketh?

## A SUMMARY.

Mr. Chairman, I have not protested against this proclamation from any sympathy I have for armed men in rebellion against their Government. For them, and with their cause, I have no sympathy. I have often doubted whether I would trust myself to do them simple justice. Without forgetting that it does not in terms apply to my own State, I do yet, with all the earnestness of an earnest nature, protest, against it, for myself and my children, for my State and for the whole country. I protest against it for the women and minors, the aged and the infirm, and for the *loyal people* of the rebel States. Guided by the example of divine clemency that spared a wicked city, there is yet enough righteousness left in the rebel

States to save them from the destroying angel who is to execute this proclamation. I protest against it as a violation of the Constitution and the liberties of my country. I protest against it as a violation of the laws of humanity, the laws of nations, and the usages of civilized warfare. I protest against it as unwise, uncalled for, tending to widen the breach rather than to hasten the conclusion of this war. I protest against it as being in the highest degree offensive to those great European anti-slavery Powers with whom it is as much our duty as our interest to be on good terms, when those terms are consistent with our own honor. I protest against it as being, not on the part of the President, but of those who have urged him to it, malicious, revengeful, and blood thirsty, and therefore not suited to the tastes and purposes of heroic enemies and generous soldiers. I protest against it as being as much a sin against the religion of Christ as it is an offence to the moral sentiment of mankind. And above all, I protest against it as being the CAUSE to which the friends and leaders of the rebellion may and will attribute their ultimate success, if ever a calamity so unmeasured overtakes the fortunes of the republic.







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“The lucid exposition made by Judge YEAMAN, of the great principles of personal freedom and the rights of property as contended for by our British ancestors from the days of Runnymede, and supplying the real source whence the Constitution of the United States derived its vigor and its wisdom, was perhaps the most pertinent part of his speech. His running comments upon English history, showing the tendency of power to encroach upon popular liberty, and the ease with which the people, when aroused, resisted it, were warnings not to be despised in these days, when we are drifting blindly back to the times of prerogative and arbitrary power.       \*       \*       \*       \*       \*       \*       \*       \*

It has at once raised its author to the front rank of our Congressional debaters.”  
*Western Paper.*